

**Title**-Legal challenges for the cannabis industry

**Purpose**-This paper examines laws and regulations applicable to cannabis in the US and the UK, and including legal reforms and international treaty obligations.

**Design/methodology/approach**-The paper relies on primary data from statutes, and secondary data from online and offline resources, and including relevant case studies.

**Findings**-Federal laws in the US and existing UK cannabis legal regime generally prohibit recreational use of cannabis. Increasingly, various individual states in the US have enabled the use of cannabis health-related uses thereby challenging the status of the UN treaties on drug enforcement. As US struggles to reconcile the conflicts between federal law on cannabis and individual states within its borders, much of the rest of the world including the UK are also struggling with how best to reconcile their domestic positions with their UN treaty obligations.

**Social Implications**-Recent disclosures of past recreational use of prohibited drugs by several candidates vying to be UK Prime Minister suggests why understanding of the laws governing the use of cannabis is useful and relevant to the general public.

**Originality**-The paper provides a general but integrated review of national laws in the US and the UK, and international treaties governing the use of cannabis.

**Keywords**-Business risk, cannabis, drug policy, environmental law, hemp, legal risk, marijuana

**Paper Type**- General review

## 1 Introduction

The European cannabis market is forecasted at €123 billion by 2028, or some more than two times Apple's 2018 revenue, and bigger than Ukraine's gross domestic product (GDP); while the world might potentially witness the birth of an industry worth US\$500 billion to US1 trillion (Davies, 2019). In the US, Americans spent some US\$6.7 billion on legal cannabis products in 2016 (Arcview Market Research & BDA Analytics, 2017). The UK cannabis market is estimated at 255 tons or around £2.6 billion across some three million consumers, and growing (Snowdon, 2018). The industry worth of cannabis and the inevitable controversies surrounding it merit more public and regulatory attention (Caulkins, 2015).

## 2 Cannabis key features

The applications of cannabis in business and industries generally draw relatively lesser attention than its deployment in medicine and recreation. There have been considerable debates and controversies, over the employment of cannabis in the latter two domains. Cannabis when used in the health industry generated various controversial issues. It has been claimed as a wonder drug that can treat various health problems, like asthma, autism, insomnia, Parkinson's and even cancer; but equally for some time, cannabis has been viewed as harmful to health (Paulo & Woo, 2019). For a long while too, cannabis when used as a recreational drug (Englund et al, 2017) also attracted considerable controversies because of its association as a drug of abuse.

Cannabis as an industry and as a disruptor to various other industries are also generating controversies. For example, the rise of industrial hemp and its related products are posing various challenges to various businesses. No less than nine major industries might be disrupted (Locker, 2019). There are further suggestions that at least twenty-three other industries are eyeing the US\$32 billion market opportunity unfolding as legal cannabis goes mainstream. Cannabis is said to be surging into large tracts of business spaces, from CBD-oil infused beauty products, to houses constructed of hemp, and to banking for cannabis retailers.

## 3 US cannabis legal position

Research insights suggest emerging signs of the cannabis going mainstream, especially in the US (Loftus, 2018). Cannabis funding witnessed more than two times increase in 2017 from previous year (Lee, 2017). Also, as the use of cannabis accelerates, both the number of deals and disclosed funding are on an upward trend. Beyond this, in early April 2019, the first US-based cannabis business listed on the Nasdaq Global Market, having sold 6 million shares at US\$17 each. This was above its projected price range of US\$14 to US\$16 (Jones, 2019). Its shares closed at US\$19.85 on 24 April 2019, or some 17% above the IPO price (Yahoo Finance, 2019). Currently, cannabis is the most commonly used illicit drug in the US.

Further, some 25% of the US population are now located in states that passed ballot initiatives enabling businesses to produce and sell cannabis (Kilmer & Kleiman, 2018). More states would follow with the Gallup poll suggesting that two of three Americans giving support to legalizing cannabis use. Though cannabis is illegal at the federal level, most US states are moving initiatives to legalize cannabis from recreational use as in Colorado, Maine, California, and seven other states; to medicinal use as in New Mexico, Florida, and 31 other states. Further, thirteen states have decriminalized cannabis through the imposition of civil fines for small amounts of cannabis possession instead of imprisonment (Marijuana Policy Project, 2018).

At the federal level, since 1970, cannabis is classified as a Schedule I substance under the Controlled Substance Act (CSA). Schedule I substance is deemed as having no accepted medical use, while having a high potential for abuse. This legislation ranks cannabis as dangerous as heroin and lysergic acid diethylamide (LSD), and ergo more dangerous to health than cocaine and methamphetamine. This makes it a federal crime to possess, grow, and sell the drug. Though it needs mentioning that there has been hardly any recorded lethal overdose from cannabis, while cocaine and methamphetamine took more than 25,000 lives in the US in 2017 (National Institute on Drug Abuse (NIH), 2019).

As cannabis is being legalized, significant economic implications arise, both for state economies and the US national economy. The industry amounted to US\$8 billion in 2017, an estimated US\$11 billion in 2018, and forecasted at US\$23 billion by 2022 (Arcview Market Research & BDS Analytics, 2018). More than 9,000 active licenses for cannabis businesses have been issued in the US in 2017, while more than 120,000 people are employed in the sector.

Taking into account the conflicts between federal and state cannabis laws, various impediments are impacting the industry's business potential. It is important to note that, though thus far the Department of Justice (DOJ) has not disturbed any cannabis business ventures operating legally under states laws, it has the option to intervene when it so chooses. Take the financial services sector for instance, those knowingly working with cannabis businesses could breach federal anti-money laundering provisions, implying the potential risk of assets seizures by the DOJ (Sacco et al, 2017). This is particularly so where they fail to regularly submit suspicious activity reports (SARs) when working with cannabis businesses. Large numbers of cannabis businesses encountered funding access and conventional banking services difficulties (Murphy, 2018).

This escalates pressures to change federal laws to enable enhanced participation of businesses in the cannabis trade. The legalization process though is unlikely to be straightforward process. It would not be a simple yes-or-no binary decision. Its consequences for public safety, health, and social equity could be influenced by options about prices, production, and the enforcement of regulations.

Meanwhile, the Marijuana Freedom and Opportunity legislation as proposed would

decriminalize marijuana at the federal level, maintain federal law enforcement's authority to deter marijuana trafficking from states that have decriminalized but not legalized marijuana, proposed authorization of US\$250 million for targeted investments in highway safety research to ensure federal agencies to evaluate driving risks under the influence of marijuana, and maintaining the Treasury's authority to regulate marijuana advertising (Senate, 2018).

The Bill's sponsors argued that that it is about empowering states to be the laboratories that they should be, and giving Americans particularly women and minority business-owners including those convicted of possession of marijuana intended for personal use, the opportunity to achieve their economic potentials (Dhar Law, 2018). The proposed federal legislation was referred to the Senate Committee on the Judiciary before presentation to the US Congress. In the event the Bill is enacted, it could still, however, face challenges from the Drug Enforcement Administration (DEA) and the Attorney-General.

The divergencies between state and federal laws generate a dilemma for law enforcement agencies. To resolve the conflict, a DOJ's Memorandum permits prosecutorial directions in states where cannabis has been legalized and where strong regulatory systems are in place. Uncertainties, nevertheless continue when the DOJ's guidelines were rescinded in January 2018 by the Attorney-General. In contrast, the Treasury earlier in 2014 enabled financial institutions to provide services to cannabis businesses without being subjected to liability. The cannabis legislative momentum is more recently pushed further when several 2020 Presidential potential candidates sponsored a bill to legalize cannabis nationwide (Chappell, (2019).

Other proposals to resolve the conflicts between state and federal cannabis laws include the Cannabis States Act (CSA). This bill seeks to amend the CSA to disenable its provisions against individuals acting in accordance with state laws. It would also clarify that financial transactions with state-legal cannabis businesses are not deemed as a constituent of drug-trafficking thereby resolving the dilemma of financial institutions when working with cannabis and cannabis-related businesses (Finkle, 2018).

The divergencies between state and federal law have indeed generated a conflict of law that law enforcement agencies and individual states struggle to resolve. In 2015, for instance, Nebraska and Oklahoma which do not legalize cannabis unsuccessfully petitioned the US Supreme Court for permission to sue Colorado as its cannabis was leaking outside the state's borders. Both claimed that Colorado's legalization scheme compromised their drug policies (Sweeney, 2018). This, and other incidents, suggest that ultimately the federal government should conclusively determine whether states are able to legalize cannabis without unintended repercussions.

To abate the conflict, the earlier alluded to 2009 DOJ's Ogden Memorandum permitted prosecutorial discretions in states where marijuana had been legalized and strong regulatory systems implemented. Uncertainties, however, continued when the DOJ's guideline was rescinded in January 2018 by the Attorney-General. In contrast, the Treasury had earlier in 2014 enabled financial institutions to provide services to marijuana businesses without being subject to liability (Dhar Law, 2018). This led to assertions that the federal government's insistence on keeping cannabis in Schedule I undermines the principles of federalism and prevents law-abiding citizens, for instance, from fully exercising their constitutional right to own a firearm because section 922(g)(3) of the Gun Control Act prevents users of Schedule I drugs from possessing or owning a firearm (Robbins, 2018; Waters, 2018). Indeed, cannabis despite its lack of potential for addiction, plethora of medical benefits, and disconnect from violence, has always been essentially deemed more addictive and

dangerous than methamphetamine, a Schedule II drug. Ordinary US citizens are therefore consequently caught in a legal blackhole, wondering how conduct could be both lawful and unlawful.

#### **4 Cannabis legal reforms in the US**

The marijuana legalization momentum is more recently pushed further when the 2020 Presidential potential candidates sponsored the Marijuana Justice Act of 2017 to legalize marijuana nationwide (Chappell, 2019). The main thrust behind the proposed bill is to repair the harms exacted by marijuana prohibition through removal of cannabis from the list of controlled substances, reducing funding for designated law enforcement activities for states demonstrating racial and/or class bias in cannabis arrest, and so on.

The proposed legislation is criticized for the lack of a provision for the regulation of legalized cannabis markets (Harvard Law Review, 2018). In the absence of a reparatory regulatory framework, the bill misses out the opportunity to remediate further the harms of cannabis prohibition. In not accounting for the revenues that would be generated by the legal cannabis markets, the legislation leaves behind a mechanism in accomplishing the proposed aims of bridging racial and economic inequality. Effective reparatory legalization would need regulatory frameworks that could enhance the representation of disadvantaged minorities in the legalized cannabis markets, including the notion of direct cash transfers to those incarcerated for cannabis offences.

Still, some have argued that it is too early to pronounce the definite positive effects of cannabis legalization (Sabet, 2018). In some US states where cannabis is legalized, data suggests positive correlations between cannabis legalization and increased crime and illicit drug use, including negative environmental impacts. This is in part attributed to many lay persons using cannabis without full comprehension of the limits of cannabis laws; and the fact that as public use is largely illegal, legalization exerted disparate impact in offence rates among minority communities. There were also impacts on homelessness, drug-testing for work purposes, and motor vehicle accidents. These developments suggest that more research is necessary to comprehend better the causative impacts of cannabis legalization in these niches.

Also, cannabis perception differs depending on the position taken (Larkin, 2018). A botanist thinks of it as a plant. A chemist thinks of it as a source of psychoactive substance. Narcotics enforcement thinks of it as a contraband, while the judiciary treats it as a Schedule I controlled substance whose cultivation, possession, and distribution is a federal crime. International affairs followers know it to be the third most commonly used recreational drug worldwide, after alcohol and tobacco; while for those involved in public affairs, cannabis remains a highly controversial subject for the last five decades. Reviews of mainstream commentaries suggest that the cannabis debate revolves around whether it has legitimate uses, it is addictive, and whether it is physically or psychologically harmful (Larkin, 2018).

It seems that despite years of debates and scores of studies, there is no consensus on the effectiveness of cannabis as a treatment for the symptoms of disease or the side effects of other treatments. This led to those for and against cannabis legalization to rely on different studies or to interpret the same scientific data differently to align with their own medical, legal and political positions.

Meanwhile, the legal context to the debate has shifted significantly, with some US states decriminalizing cannabis, other states regulating its use, and yet others holding on to the federal position. These different positions complicate the question of how the criminal justice system would need to resolve the distinct problems that arise when the emerging medical and recreational

cannabis laws intersect with the statutes criminalizing reckless driving and driving under the influence of alcohol, for example. Where the existing framework is inadequate to address such risks, this would call for the identification and implementation of new remedies to deal with the intersection of such controversial, but important public policies (Larkin, 2018).

Present insights suggest that the US Congressional process that adopted federal control over cannabis was not supported by any scientific review, particularly pertaining to cannabis. Congressional records showed no experts testified in any hearings, nor were doctors invited to provide any expert opinions over the public's exposure to the substance, and to top it all, no studies of any kind were incorporated in the process that led to the regulation of cannabis. In short, the decision to regulate was completely arbitrary, or more the outcome of a combination of simple anecdotal narratives conceived on prejudice and ignorance of cannabis (Katner, 2018). Through the controlling of access to the substance, the government was able to select the studies it sought to advance, and in effect deprived access for researchers seeking to test the substance against previously asserted claims which rate poorly under scientific examination. Further, the statutory scheme enabling the Attorney-General to reclassify a controlled substance is viewed as substantially flawed the moment it permits political objectives to regulate and restrain scientific inquiry (Katner, 2018).

With regards to the calls for rescheduling cannabis to Schedule II, the Federal Drug Enforcement Administration (DEA) has in 2011 denied the direct petition process, and again in 2016 (DOJ, 2016). Multiple lawsuits have also been launched to reclassify (Grinspoon v Drug Enforcement Administration, 1987; National Organization for Reform of Marijuana Laws v. Ingersall, 1974). To date, both these administrative and legal approaches have been fruitless. Thus, when Congress categorized cannabis alongside other more harmful controlled substances without scientific basis, the same unsupported perceptions of cannabis continued to prevail despite increased legislations decriminalizing cannabis at the state level.

The AG could initiate formal rulemaking procedures to alter changes to drug classification on his own, by request from the Secretary of Health and Human Services, or through an interested party petition (Katner, 2018). The first two avenues appear close, given the current administration's posture, while the third avenue via petition as alluded to earlier has also failed. Despite these setbacks, the rescheduling of cannabis from schedule I to schedule II is still considered a pragmatic approach for medical cannabis under present US federal laws.

The option of complete removal of cannabis from the federal schedules of drug regulation could place the control of cannabis use and distribution under the administration of individual states. Removing cannabis from the purview of federal regulation does not necessarily culminate in nationwide deregulation, just federal deregulation. This initiative would enable individual states to enjoy the sole ability to decide on how they wish to exercise authority over cannabis. Those states that have legalized cannabis have already enacted severe restrictions on various aspects of cannabis cultivation, production, and consumption; including the restriction of cultivation areas (Maxwell & Mendelson, (2016).

Still, the complexities of legally operating cannabis-based businesses are in need of resolution. For example, cannabis farms aiming to undertake transactions with federally insured banks could risk exposing these banks to potential federal money-laundering charges, as such businesses are outlawed under federal law (Chemerinsky et al, 2016). It has been argued that the amount of revenue generated by these state businesses, rather than the beneficial medical uses would probably be the compelling factor (Patton, 2010), that in the end alters federal cannabis regulation

(Duncan, 2009). Meanwhile, the federal government appears to adopt a non-enforcement approach to circumvent resolving the conflict between federal law, and the states assertions that via the Tenth Amendment they hold reserve powers to regulate areas not specified or mentioned in the US Constitution thereby enabling them to nullify federal laws ( Oliver, 2016). Thus, presently the federal government holds on to its position, even as more states okay cannabis (Chilkoti, (2017).

The US Congress and the US administration, however, could reschedule cannabis from Schedule I to Schedule II to enable the medical use to advance; or disable the federal government from partaking in cannabis regulation altogether. This would enable US states to decide whether Americans required protection under the criminal justice system (Annas, 1997), or their welfare better catered for by applying equivalent laws that are currently deployed in alcoholic beverages and tobacco (MaCoun & Reuter, 2001). Many Americans take to the use of cannabis and cannabis-based medical products when other medications are unable to provide effective relief, while at the same time the minorities in particular are incarcerated for possession or distribution of cannabis thereby making taxpayers bear the burden (Clark, 2000).

In summary, US federal restrictions on cannabis use seems to be more linked to the community's fear of foreigners and their use of cannabis as a recreational substance, especially from south of the country's border (Boyum & Reuter, 2005), than medical or scientific concerns about the harms of narcotics and other controlled substances (Zimmer & Morgan, 1997). This implies that there is a good case for rescheduling cannabis from Schedule I to Schedule II, or completely removing it from federal regulation. Taking these together with state law decriminalization of cannabis, this could decrease criminal justice costs linked to cannabis-related offences (Husak, 2006), and curtail government intrusions on important American values like privacy and liberty (American Civil Liberties Union (ACLU), 2013). Such initiatives would enhance the credibility and legitimacy of other government initiatives over other control substances (MaCoun & Reuter, 2001).

The direction of public consensus as well as emerging state legislations on cannabis could be conducive for the rescheduling of cannabis from Schedule I to Schedule II, and/or the withdrawal of federal involvement in the classification and regulation of the substance (Fisher, 2019). The route to legalization commences with decriminalization and the removal of cannabis from the controlled substances schedules, and this must be achieved through smart, fair, and effective criminal justice policy as part of a wider movement to rethink cannabis (Chung et al, 2018).

#### **4 UK cannabis legal position**

Across in the UK, many businesses are increasingly eyeing entry into, or investing in the legal cannabis space, whether within the UK or abroad. The cultural change recently witnessed in the US, Canada, Uruguay, and elsewhere have been contagious (Carreon, (2018), with the UK increasingly exposed. A recent survey by Volteface and the Centre for Medicinal Cannabis suggests that a majority of British public support legalization of cannabis, with some 59% supporting, and some 31%opposing the idea (Rahim, 2018). Interestingly, more than two-thirds of 18 to 24-year old, and almost half of those over 65 believing the same.

Cannabis was illegalized in the UK in 1928 through the Dangerous Drugs Act of 1920, as well as its listing as a controlled drug under the Misuse Drugs Act 1971 (UK Legislation, 2019), meaning that it is an offence to export, import, possess, or supply cannabis in the UK. Section 20 of this legislation also contains the specific offence of assisting a drugs offence overseas. Further, the Home Office is empowered (Medicines & Healthcare Products Regulatory Agency (MHRA), 2018) to provide

exceptions for particular purposes, like for medical research, for medical products, or for the growing of industrial hemp.

There appears to be a gradual shift towards a more relaxed perception of cannabis use. Data from the Home Office from 2016 suggests that cannabis was the most commonly used illegal drug in the UK, with almost 6.5% of adults aged between 16 to 59 or some 2.1 million people having used it in the previous year (Home Office, 2018). Further, A YouGov poll revealed that 75% of the British public support using cannabis on medical grounds, while almost 43% support it being legalized for recreational use (Curtis, 2018).

Currently, cannabis is a class B drug, thus making it illegal to possess, grow or distribute in the UK (UK Government, 2019). Those caught in possession are liable to unlimited fines, face a maximum of five years in jail, or both. Those caught supplying the drug could face a maximum jail sentence of fourteen years. For medical cannabis, such as cannabidiol (CBD), the non-psychoactive constituent of cannabis, this is presently being researched for its therapeutic features.

The Medicines and Healthcare Products Regulatory Agency (MHRA) has in 2016 taken the position that where CBD is advertised for medical purposes, it would have to be licensed thereby implying that it is legal provided claims are not made about its benefits (MHRA, 2016). In other words, unlike THC the psychoactive part of cannabis known for its recreational high, CBD has no psychoactive impact, and could be legally sold in the UK, provided its THC dosage is below 0.05%; but marketing it as a medication would need compliance to the more robust MHRA safety protocols (Matthews-King, 2018). Responding to the plights of sick children, the Home Secretary announced in June 2018 (Watts, 2018) that the UK would reschedule cannabis-based products where there is good evidence of medicinal benefits. In November 2018, the UK announced that medical cannabis could be accessed on prescription (Burns, 2018).

Thus far, there has been no reported cases of death as a direct consequence of cannabis consumption in the UK. In general, cannabis is ergo a low-risk drug; where some 10% of cannabis users could develop addictions, compared to some 32% for tobacco users and 15% of alcohol users (Chambers, 2018). Though the cannabis users' numbers fell by a third between 2006 and 2014, demand for it for the alleviation of related mental health problems expanded more than fifty percent as a consequence of 'skunk'. This is a cannabis strain high in THC, the primary psychoactive part of cannabis.

Calls are made for the government to legalize cannabis for medicinal and recreational uses. (Nicholls, 2019). The idea is to stem the flow of potent strains carried out by criminals and drug lords to the tune of some £2.6 billion, or around 225 tons across some three million people (Snowdon, 2018). The legalizing of cannabis, it is argued would enable the availability of safer, regulated cannabis to ward off the more dangerous strains, apart from the generation of tax revenue that could be utilized to fund mental health services. At the other end of the spectrum, various concerns (Centre for Social Justice (CSJ), 2018) are expressed over the matter of cannabis legalization. Legalization of cannabis it is argued would give rise to more than a million new users under 25, a sharp escalation in frequency of existing users, and thousands more people plagued by addiction; while the idea of criminals moving away because of regulation would remain an illusion. Instead, those who oppose called for more sustained focus on the harm cannabis can bring as well investing more in treatment.

It has also been contended that cannabis regulation should not be perceived as revenue-enhancing opportunities or commercial free-for-all, but as a pragmatic way to curtail criminality and protecting in particular the health of young people (Nicholls, 2019). It has been deemed disappointing that the

Independent Reviewer of Drugs and Crime has been mandated to concentrate on looking into ways drugs fuel serious violence, rather than focusing on legal reforms for cannabis (Home Office, 2019). While more effective policing and prevention of drug-taking can help, legally regulating supply as Canada, Portugal and others have done could provide the UK with the mechanism to protect young people, reduce criminality, and render all cannabis use safer (Nicholls, 2019).

## **6 Cannabis legal reforms in the UK**

On the legislative front in the UK, more disappointments came for those advocating for cannabis legal reforms. The House of Commons rejected the proposal to legalize the possession and consumption of cannabis and to provide for the regulation of the production, distribution and sale of cannabis (Angell, 2018). This means that cannabis can be accessed in the UK, but only through a prescription for medicinal use; while the option for recreational use would still be unavailable.

On the business front, when a UK business invests in cannabis businesses overseas, there could be issues associated with the Proceeds of Crime Act 2002 (POCA). This is because criminal conduct covers anything undertaken overseas that would constitute an offence if it occurred in the UK, even if it is legal where it took place elsewhere (Mkandawire & Russell, 2019). POCA's provision implies that an UK's overseas business could be undertaking a criminal conduct, and further implying that the receiving or possessing of the proceeds might ergo tantamount to money-laundering. POCA's other provisions though could disable this offence by seeking consent from the National Crime Agency (NCA).

Under section 338 POCA, it is possible to obtain a defence to money-laundering offences by making a disclosure to the NCA prior to effecting the relevant activity. The NCA though would have to handle a delicate balancing act; as giving approval to UK businesses receiving the proceeds of cross-border cannabis sales might portray UK as being less tough on the cannabis industry, while a rejection could raise difficult questions with regards to the proceeds being the target for forfeiture. For now, it pays those UK businesses involved in the cannabis business within UK, overseas, or both, to give some good attention to the laws and regulation behind the use of cannabis. As it now stands, the industry is heavily regulated, and marked by opaque financial arrangements (Hall, 2017) surrounding the industry.

In summary, the pro-legalization for cannabis camps in the UK sum up their case emphasizing that cannabis legalization would achieve 'win-win-win'; meaning criminals would lose a lucrative industry, consumers get access to better, safer and cheaper products, while the burden on the general taxpayers would be reduced (Kollewe, 2018).

The against cannabis camp, on the other hand argued foremost that cannabis legalization could disrupt the current overall downward trend; with further signs that over a quarter of those under twenty-five not yet exposed to the substance experimenting with it if cannabis was legalized; and that some over one-third of 18-24-olds would smoke it more regularly (CSJ, 2018). These suggest that present law does have a moderating impact on the initiation and frequency of consumption, and accordingly retained.

Also, regulatory frameworks that enable home cultivation would not sufficiently regulate quality or product access, and highly difficult to monitor or to police. Present consumer trends also demonstrate that age limits applicable to substance access are not particularly effective, as shown in childhood drinking. As such, every initiative must be taken to divert offenders from immediate criminal sanction as the impact of such records could be damaging to young lives. More efforts therefore have to be undertaken to provide education highlighting the potential dangers of cannabis.



This, however, is unlikely to be a viable alternative to the existing law, which though imperfect, substantially mitigates cannabis consumption especially for recreational purposes.

However, when the UK Home Office relaxed the law on the prescription of medicinal cannabis by specialist doctors in the UK, this sparked a renewed debate on the possibility of its legalization for recreational. UK's two main political parties do not appear to be inclined towards this, leaving others to call for a fully regulated cannabis market such as found in Canada's legislative reforms. Those in favour of legalizing recreational cannabis argued that this could help to remove the criminal element, while simultaneously boosting tax revenue. Those against, maintained that there could be risks to mental health, and an increase in lung disease. On balance, the current opinion climate seems inclined towards watching and monitoring what the US, Canada, and others are doing to guide UK's legal approach. There are, however, international obligations with regards to drug policy that both the US and the UK might take more serious notice of.

## **7 International obligations**

Increasingly, many advanced nations are concerned that the international drug control regime's outdated and restrictive drug control mechanisms do not cover human rights standards and public health needs. They refer to the UN's historically prohibitionist UN treaties like the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which extensively limit options in legalizing and regulating schedule-listed substances, including cannabis (Habibi & Hoffman, 2018).

They have also seen how Canada and elsewhere have challenged conventional interpretations of these international obligations through non-enforcement of existing criminal laws on drug possession and use, diversion of offenders to non-criminal channels, as well as the legalization of cannabis at national and subnational levels. The latter could, however, push the legal limits prescribed by the UN treaties. These options though imperfect would enable these nations and others to legalize cannabis, while respecting international law. Also, leveraging on the growing sentiment of tolerance towards cannabis in the community of nations, these cannabis law pioneering nations could advance a public health-oriented legal framework within their borders to achieve more broadly their drug control regime premised on a human rights-centred, evidence-informed and legally consistent regime for the benefit of all nations (Habibi & Hoffman, 2018).

There are the further options (Habibi & Hoffman, 2018) where nations could choose to denounce and re-accede to these UN treaties. A nation could also propose a rescheduling of cannabis-related substances. This would, however, require amendments to these treaties. The UN nevertheless has cautioned that even where current provisions might be outdated or go against current medical opinion and scientific evidence, any unprincipled interpretation of these could undermine the delicate balance of peace, order, and stability provided by international treaty obligations. A nation could, nevertheless, embrace a principled approach to reconcile its national priorities with its international obligations, by contending that the current drug control regime was designed under different political and scientific conditions, and that the present global war on drugs have breached the human rights of people across the world. This way, a nation could become progressive change agents for the entire community of nations to embrace a better approach to drug and related policies.

## **Concluding remarks**

Federal laws in the US and the present UK cannabis legal regime generally prohibit recreational use

of cannabis. Various individual states in the US though have enabled the use of cannabis for various purposes, thereby challenging the status of the UN treaties on drug enforcement. As the US continues with its struggles to reconcile the conflicts between federal law on cannabis and individual states within its borders, the rest of the world also equally struggles on how best to reconcile their domestic positions with their UN treaty obligations. The on-going debate in the medical and scientific community, the absence of approval by central authorities, as well as social and political differences contribute to the variations between countries.

In the end, therefore, the route any nation decides on would depend on its existing situation and domestic and international political priorities. Inevitably, however, all nations on becoming a party to any international convention framework do not get precisely what they seek, but on balance the advantages could outweigh the disadvantages. For most nations, they have the flexibility of going by soft defections via the decriminalization of possession of small amounts of cannabis for personal use, decriminalization of small-scale cultivation for personal use, decriminalization of small-scale not-for-profit supply via cannabis clubs or co-ops. These would enable them to defect from the prohibitive norms at the centre of the drug regime, while remaining within the letter of the conventions system (Transnational Institute (TI), 2016; Transform Drug Policy Foundation (Transform), 2014)). This has worked sufficiently for some nations to discourage them from making more substantive challenges.

Yet, for a minority of others they appear to have opted for hard defections, either by denouncing the UN treaties or openly breaching them. These developments taking place in different manners across the world have progressively eroded the consensus behind the punitive prohibition approach that the drug treaties established. This suggests that the consensus has been fractured gradually over time, and further suggesting that reform of the system regarding cannabis might potentially be on the table for deliberations by the community of nations. It might help though if debates on the medical use of cannabis and cannabinoids are distinguished clearly from the on-going debates on the legal status of recreational cannabis (Abuhasira et al, 2018).

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